

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Hilltop Tower Leasing, Inc.	)	File Number: EB-10-PA-0014
	)	
Licensee of Station WPSQ972	)	NAL/Acct. No.: 201132400003
	)	
Everett, Pennsylvania	)	FRN: 0016-89-6722

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: January 14, 2011

Released: January 18, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Hilltop Tower Leasing, Inc. ("Hilltop"), licensee of land mobile radio station WPSQ972, in Everett, Pennsylvania, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's Rules ("Rules")<sup>1</sup> by operating from an unauthorized location. We conclude that Hilltop is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. At the time of the investigation at issue here, the license for land mobile radio station WPSQ972 authorized Hilltop to operate radio transmitting equipment on the frequencies 452.2375 MHz, 452.2625 MHz, 452.3625 MHz and 461.4125 MHz from antenna structure number 1204406 located on Tussey Mountain in Everett, Pennsylvania at the coordinates 40° 00' 04.3" North Latitude and 078° 24' 03.1" West Longitude.<sup>2</sup>

3. On January 19 and January 20, 2010, an agent from the Enforcement Bureau's Philadelphia Office ("Philadelphia Office") determined that digital emissions on the frequencies 452.2375 MHz and 461.4125 MHz were emanating from radio transmitting equipment located on antenna structure number 1207856 at Kinton Knob Mountain in Bedford, Pennsylvania at the coordinates 40° 00' 46.3" North Latitude and 078° 33' 11.0" West Longitude, approximately eight miles from Tussey Mountain. After conducting the monitoring on January 20, 2010, the agent contacted Hilltop and spoke with its president, Jeff MacAlarney, who claimed that he could not answer the agent's questions regarding operation on the frequencies 452.2375 MHz and 461.4125 MHz at Kinton Knob Mountain. Later that day, however, the agent found that operation on those frequencies had stopped.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> See File No. 0002685135.

<sup>3</sup> During a telephone conversation with the agent on January 26, 2010, Mr. MacAlarney acknowledged that he had contacted the station's technician on January 20, 2010 and asked him to turn off the transmitter.

4. The Philadelphia Office issued a Letter of Inquiry (“*LOI*”) to Hilltop on February 23, 2010.<sup>4</sup> In response to the *LOI*, Hilltop admitted that, in December 2009, it had moved some of the radio transmitting equipment for station WPSQ972 from its authorized location on Tussey Mountain in Everett, Pennsylvania, to Kinton Knob Mountain in Bedford, Pennsylvania.<sup>5</sup> Hilltop further conceded that the equipment remained in operation and periodically transmitted data bursts.<sup>6</sup> Hilltop also claimed that it was maintaining the station at Kinton Knob Mountain as a backup for Bedford County 911, which had been experiencing problems with one of its Bedford County dispatch stations on Tussey Mountain.<sup>7</sup>

### III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended (“*Act*”)<sup>8</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>9</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

6. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.<sup>11</sup> Section 1.903(b) further provides that the “holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.”<sup>12</sup> As described above, on January 19 and January 20, 2010, an agent from the Philadelphia Office determined that Hilltop operated station WPSQ972 on the frequencies 452.2375 MHz and 461.4125 MHz from an unauthorized location. Hilltop conceded in response to the *LOI* that it had moved station WPSQ972 from Tussey Mountain to Kinton Knob Mountain in December 2009 for the purpose of providing a backup for Bedford County 911. Hilltop further admitted that the transmitting

<sup>4</sup> See Letter of Inquiry from Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to Hilltop Tower Leasing, Inc., dated February 23, 2010.

<sup>5</sup> See Letter from Jeff MacAlarney, President, Hilltop Tower Leasing, Inc., to Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, dated March 3, 2010 (“*LOI Response*”).

<sup>6</sup> *LOI Response* at 2.

<sup>7</sup> *Id.* Hilltop no longer operates on Kinton Knob Mountain, but an affiliated company, Compros, Inc., obtained a license under call sign WQLH893 to operate on the frequencies 452.2375 MHz, 452.3625 MHz, and 461.4125 MHz from antenna structure number 1207856 on Kinton Knob Mountain in Bedford, Pennsylvania. See File No. 0004098883, granted January 26, 2010.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. Denied*, 7 FCC Rcd 3454 (1992).

<sup>10</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>11</sup> 47 C.F.R. § 1.903(a).

<sup>12</sup> 47 C.F.R. § 1.903(b).

equipment was operating and periodically transmitting digital bursts.<sup>13</sup> Based on the evidence before us, we find that Hilltop apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating radio transmitting equipment at an unauthorized location.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating at an unauthorized location is \$4,000.<sup>14</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Hilltop is apparently liable for a forfeiture in the amount of \$4,000.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Hilltop Tower Leasing, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 1.903(a) of the Rules.<sup>16</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Hilltop Tower Leasing Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>8</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Hilltop Tower Leasing, Inc. shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

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<sup>13</sup> *Id.*

<sup>14</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

<sup>8</sup> *See* 47 C.F.R. § 1.1914.

to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. The statement shall also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Hilltop Tower Leasing, Inc. at 400 Highland Avenue, Altoona, Pennsylvania, 16602.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau